INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.R. No. 1807 of 1994
Date of decision December 5, 2007

Subhash Babar s/o Brij Lal, r/o 224-L, Model Town, Rohtak.

..... Petitioner

Versus

Ajay Pathak s/o Sh. K.K. Pathak, r/o 219, Subhash Nagar, Rohtak.

..... Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. R.A. Yadav, Advocate
for the petitioner.

None for the respondent.

****

Sham Sunder, J.

This revision is directed against the order dated 19.4.1994 rendered by the Court of Additional District and Sessions Judge, Rohtak vide which it dismissed the appeal against the judgment dated 18.3.1992 of the Court of Additional Senior Sub Judge, Rohtak.

2. The parties entered into an agreement to carry on the business exclusively relating to the work of "Establishment of Computer Center in M.D. University, Rohtak. They were to share the profits and loss equally. The work was to be completed, in the name of Alok Construction Company. A dispute arose, between the parties, as a result whereof, the arbitration clause, was invoked, by moving an application for the appointment of an Arbitrator, which was allowed on 6.9.1989, by the Lower Court. With the consent of both the parties, Sh. Ved Pal, XEN, was

appointed as Arbitrator, vide order dated 13.2.1989. Subsequently, Sh. Ved Pal, was transferred from Rohtak to Hisar, and he showed his inability to continue as an arbitrator vide his request letter dated 21.2.1990. Ajay Pathak, respondent-applicant, moved an application dated 2.8.1989 for his removal. Thereafter, the Lower Court appointed Sh. T.D. Aneja, XEN, Provincial Division No. II, Rohtak, as Arbitrator. The revision-petitioner moved an application for the removal of new Arbitrator, on the averments, that Sh. T.D. Aneja, had been working with the father of the respondent, who was also an Executive Engineer, at Kurukshetra, but this application was dismissed on 15.4.1991. Thereafter, Ajay Pathak moved an application dated 5.3.1991 for extension of time so as to enable the Arbitrator, to pronounce the award. The same was still lying undecided when the Arbitrator pronounced the award dated 29.3.1991. Later on, the application for extension of time was allowed on 15.4.1991. The revision-petitioner filed revision petition bearing No.3907 of 1991, before this Court, but the same was dismissed on 2.12.1991, holding that once the Court extended the time, it related back to the date of application, namely 5.3.1991.

3. Thereafter, Ajay Pathak, moved an application for making the award dated 29.3.1991, as rule of the Court, which was opposed by the revision-petitioner, by filing objections on 27.4.1991, on the ground, that the Arbitrator had no authority to pronounce the award; and that he was a colleague of the father of the respondent, namely Sh. K.K. Pathak, and, as such, the award was obtained improperly; that the Arbitrator did not follow the procedure, as required by law; did not give an opportunity to the petitioner to bring his evidence; that the award was non speaking one and was rendered on extraneous matters.

4. On the application and reply, the following issues were struck, on 6.6.1991 by the Lower Court:-

> "1. Whether the award submitted by the arbitrator is liable to be set aside as alleged?OPP
> 2. Relief."

5. The parties led evidence. After hearing the learned Counsel for the parties, and on going through the evidence on record, the Court of Additional Senior Sub Judge, Rohtak vide its judgment dated 18.3.1992, made the award, as rule of the Court.

6. Feeling aggrieved, against the judgment dated 18.3.1992, an appeal was preferred, by the revision petitioner, which was dismissed vide judgment dated 19.4.1994 by the Court of Additional District Judge, Rohtak.

7. Still dissatisfied, the instant revision petition was filed by the revision-petitioner.

8. I have heard learned Counsel for the petitioner, and have gone through the record of the case, carefully.

9. The Counsel for the petitioner, at the very outset, contended that the arbitrator had no jurisdiction to pronounce the award, after the expiry of period, originally granted to him, for making the same. He further contended that, on account of this reason, the award having been pronounced, without jurisdiction, was liable to be set aside, and the Courts below were wrong in coming to the contrary conclusion. The submission of the learned Counsel for the revision-petitioner, does not appear to be correct. It may be stated here, that the award was not pronounced, within the time, granted to the arbitrator, and an application dated 5.3.1991 was moved by the respondent for extension of period. When that application was

still pending, the Arbitrator gave his award dated 29.3.1991. Later on, vide order dated 15.4.1991, the Court allowed the application, for extension of time. That order was challenged, by filing revision petition No. 3907 of 1991. That revision petition was decided on 2.12.1991, holding that once the Court extended the time, by order dated 15.4.1991, it related back to the date of the application namely 5.3.1991. This view was taken by this Court, in that revision petition, on the ground, that on account of action or inaction of the Court, no party could be allowed to suffer. Once, the revision petition against the order dated 15.4.1991, extending the time, for making the award, was dismissed by this Court now, it does not lie, in the mouth of the petitioner, to raise the same plea, again saying that the award was rendered by the Arbitrator, without any jurisdiction. In this view of the matter, the contention of the learned Counsel for the revision-petitioner, being without merit, must fail, and the same stands rejected.

10. It was next contended by the learned Counsel for the petitioner, that the Courts below were wrong in coming to the conclusion that the arbitrator rightly awarded interest at the rate of 18% per annum from the date of decree. He further contended that the award of interest at the rate of 18% per annum was patently illegal. The contention of the learned Counsel for the petitioner, in this regard does not appear to be correct. The arbitrator awarded interest, on the basis of the terms and conditions contained in the agreement, executed between the parties, and not beyond the same. The Courts below also took into consideration, the factum that the amount due to the respondent was being illegally and improperly used by the revision petitioner for a long period, as a result whereof, he was deprived of utilization thereof, in a proper manner. The

Courts below came to the conclusion that had this amount been paid to the petitioner, in time, he would have certainly invested the same, in some business, getting lucrative returns. The award of interest at the rate of 18% per annum, could not, therefore, be said to be unreasonable or excessive. The contention of the learned Counsel for the revision petitioner, in this regard, being without merit, must fail, and the same stands rejected.

11. It was next contended by the learned Counsel for the petitioner, that since the father of the respondent, was a colleague of the arbitrator, it could certainly be said that the award was pronounced improperly by him. Such a plea was taken by the petitioner, by moving an application, before the Court of Additional Senior Sub Judge, Rohtak, and the same was declined. In case, the petitioner was aggrieved against the order passed by the Court of Additional Senior Sub Judge, he could certainly resort to the legal remedy available to him. That order having become final, now, it does not lie in the mouth of the petitioner, to say that the Arbitrator, was in any way interested, in the respondent, or that the award was improperly procured, from him. The contention of the learned Counsel, being without merit, must fail, and the same stands rejected.

12. The Courts below, were right in making the award, as rule of the Court. The judgments of the Courts below, do not suffer from any illegality and infirmity and deserve to be upheld.

13. For the reasons recorded hereinbefore, the petition being without merit, must fail, and the same stands dismissed with no order as to costs.

(SHAM SUNDER)
JUDGE

December 5, 2007
archana